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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUNG KEUN KIM,	.	Docket No.
	.	1:21-cv-01422-ENV-RER
Plaintiff,	.	
	.	
v.	.	Brooklyn, New York
	.	Tuesday, July 19, 2022
NEW YORK MEAT, INC., et	.	
al.	.	
	.	
Defendants.	.	
.	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	Ryan Kim Law, P.C. RYAN J. KIM, ESQ. 222 Bruce Reynolds Boulevard Suite 490 Fort Lee, New Jersey 07024 718-573-1111
For the Defendants, New York Meat, Inc. and Jong Hwan No:	Law Offices of Jonathan Y. Sue, PLLC JONATHAN Y. SUE, ESQ. 303 Fifth Avenue Suite 1207 New York, New York 10016 212-967-1001
For the Defendant, Picnic World, Corp:	Hur & Lash, LLP ROBERT L. LASH, ESQ. SCOTT HUR, ESQ. 600 Sylvan Avenue Suite 109 Englewood Cliffs, New Jersey 07632 212-468-5591

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Magistrate
3 Judge Reyes. We're holding a telephone conference in the
4 case of Kim versus New York Meat, et al., docket number
5 21-cv-1422. Counsel for the Plaintiff, please state your
6 name for the record.

7 MR. KIM: Good afternoon, Your Honor. Ryan Kim on
8 behalf of the Plaintiff.

9 THE COURT: Counsel for New York Meat and Jong Hwan
10 No?

11 MR. SUE: Yes, Jong Hwan No and New York Meat, Inc.
12 Good afternoon, Your Honor. Jonathan Sue.

13 THE COURT: And counsel for Picnic World?

14 MR. LASH: Good afternoon, Your Honor. This is
15 Robert Lash, and I have Scott Hur with me as well.

16 THE COURT: Good afternoon, all. So Mr. Kim, this
17 is your motion to compel, so why don't you take it away.

18 MR. KIM: Yes, Your Honor. There are a host of
19 issues dealing with the discovery in this matter, Your Honor,
20 so I filed letters to the Court. So basically, we amended
21 the complaint to add Picnic World, and Mr. -- that was last
22 year. Mr. Lash filed his appearance on December 10th of last
23 year so that's when the -- you know, he started participating
24 in the action. And this year, January, the Court held
25 a -- you know, a status hearing and set the deadline for the

1 discovery until May 31st. Party has been working on
2 discovery, and one of the main issues is that the most recent
3 court order stated that the -- the parties can -- so the
4 plaintiff was given time to depose but was limited to the
5 parties only.

6 And so based on that -- you know, Your Honor's
7 order, the Defendants are saying, you know, the managers or
8 the bookkeepers are not a party because the
9 corporation -- you know, only the officers or you know, the
10 directors are the parties. So basically, although we asked
11 them to have them be available for depositions and that's
12 because the Plaintiff said that he -- you know, not only did
13 he have direct dealings with those people, those -- the
14 bookkeepers and the managers and -- the Picnic World
15 basically, they're flat out refuting that Plaintiff even ever
16 worked for them, was -- you know, was not even an employee.
17 And at the same time, they're not making any of these people
18 available for depositions.

19 So the Plaintiff, you know, testified that, hey, I
20 did -- you know, all these people called me constantly
21 to -- and then they asked me to go purchase things for the
22 restaurant. You know, the Plaintiff provided me a list of
23 names. I, you know, made it available to the Defendant's
24 counsel. And so obviously, we need -- you know, we wanted to
25 depose them and say, hey, did you call Plaintiff and then ask

1 him to buy these things? Or did you call Plaintiff and then
2 ask him to deliver these things? These are, obviously, I
3 mean, basically -- I mean, necessary information that we need
4 to gain, especially in light of the fact that Picnic World is
5 flat-out denying that Plaintiff ever worked for the
6 restaurant.

7 And again, Defendant's position is that, look, the
8 Court said, it's parties only. Parties limited to the
9 president, officers, and then directors, and you know,
10 clearly managers and bookkeepers are not those, so you know,
11 they're not part -- you know, they're not going to be
12 available for deposition. So obviously, I don't think that
13 was the Court's intent to only limit to the officers. And
14 here, these two corporations, Picnic World and New York Meat,
15 you know, it's not like AT&T or Coca-Cola where there's, you
16 know, tens of thousands of employees. You know, they
17 themselves admit that they have less than 10 employees each.
18 You know, we're dealing with a single-digit employees, so
19 for -- you know, and --

20 THE COURT: You want to depose the bookkeepers and
21 the managers for each of these corporations?

22 MR. KIM: Yes, Your Honor. And then, those people
23 that the Plaintiff identified as having contact with him, who
24 actually, you know, called them and you know, ordered to buy
25 things for the restaurant or ask him to deliver certain

1 things, so does that consist of the Plaintiff's work.

2 THE COURT: How many depositions have you taken of
3 the parties so far?

4 MR. KIM: Two, Your Honor, one each. One from the
5 New York Meat and one from the Picnic World, so that's it.
6 And when I sent the deposition notices and I asked
7 them -- and I even said Your Honor so that hey, I understand
8 the employees are busy; I don't want to you know,
9 inconvenience them, so I am willing to travel to the
10 restaurant and there is a basement where the customers are
11 not there, so without the eyes of looking at any customers.
12 You know, I will bring the court reporter, interpreter, and
13 go to the basement, and then the employees can just come in,
14 you know, just briefly --

15 THE COURT: Wait. Bookkeepers and managers are
16 different than employees, all right. We're talking about
17 bookkeepers and managers. You provided a list to the
18 Defendants of all of the people you want to depose, correct?

19 MR. KIM: Correct, Your Honor. So I provided a
20 list of --

21 THE COURT: How many people are on that list?

22 MR. KIM: So on that list, Your Honor -- so -- one,
23 two, three, four, five -- seven, Your Honor.

24 THE COURT: Seven between the two companies?

25 MR. KIM: Seven from the Picnic World, Your Honor.

1 THE COURT: So this is only with relation to Picnic
2 World, then. It's not --

3 MR. KIM: Actually, so with the New York Meat, Your
4 Honor -- so we have a different issue because they're
5 claiming --

6 THE COURT: Okay. Then, we'll talk about that
7 later. I want to handle --

8 MR. KIM: Yes, Your Honor.

9 THE COURT: -- this issue by issue. Seven --

10 MR. KIM: Yes, Your Honor.

11 THE COURT: -- people on your list to Picnic World
12 who the Plaintiff contends are either bookkeepers or managers
13 or --

14 MR. KIM: Or employees that he had interaction
15 with, Your Honor. So they know about the
16 employee -- Plaintiff worked for the Picnic World.

17 THE COURT: Okay. Mr. Lash, do you want to respond
18 to that?

19 MR. LASH: Yes, Your Honor, a few things. So
20 Picnic World, you know, never, you know, said that Mr. -- you
21 know, the Plaintiff, Mr. Kim, did not do any work for the
22 business. He was, from our perspective at least, not an
23 employee. He did occasional odd jobs. There were occasions
24 where some people -- at the restaurant where he was sitting
25 there eating and would say he would go to -- he was going to

1 the supermarket, does the chef need anything? And he would
2 go to the supermarket for himself and then supply something
3 to the restaurant if they wanted, things like that.

4 Or there were some times -- and there's been
5 testimony on this from Picnic World that there were times
6 that he -- they had a delivery to do and they -- he was there
7 and they said, you know, do you want to do this delivery;
8 we'll give you, whatever, 50 bucks or 100 bucks, or we'll
9 have our other delivery guy -- you know, we'll call a
10 delivery service to do it. So they're not contending that he
11 didn't do any work.

12 The question is, you know, we don't believe he was
13 an employee. But beyond that, the Plaintiff's testimony at
14 his deposition was that during no week did he ever work more
15 than 20 hours for Picnic World. So whether he's an employee
16 or an independent contractor or however he's getting
17 classified, he did not even come close to the threshold for
18 being eligible for overtime wages. But beyond that, if he
19 want -- you know, so our position was that he doesn't need to
20 depose every employee and every person that he's ever come
21 into contact with because there's no dispute that he did do
22 some work for the business.

23 There's a question central to this case of how many
24 hours. And the Plaintiff himself testified it's not
25 even -- you know, it was a few days a week two or three times

1 a month, according to what he has put in writing, the
2 Plaintiff himself. So with that we don't feel that -- to
3 burden seven different -- and I'll come to the seventh, but
4 seven different employees of the business.

5 In his interrogatory responses, we asked, who are
6 your supervisors at Picnic World? Who do you claim were your
7 supervisors? And we discussed this the last time we spoke
8 with Your Honor, and he identified three individuals, two of
9 whom are still alive, one of whom has passed away. The two
10 of whom who were still alive, he's already completed their
11 depositions. So for him to just say, did I work -- and you
12 know, they testified, you know, he did -- they did ask him to
13 do some things on occasion. He did them. He was paid. Mr.
14 Kim, the Plaintiff, testified he did things on occasion. He
15 thought he was paid, but he didn't get overtime wages for
16 working 20 or less hours. And that's going to be -- you
17 know, I guess that's the issue in this case. But for him --

18 THE COURT: Mr. Kim, are you contending that Picnic
19 World and New York Meats constitute a single employer?

20 MR. KIM: They're joint employers, Your Honor. So
21 there's a lady called grandma, we call her grandma -- so
22 she's the one -- she started -- you know, she basically
23 oversaw both businesses. And basically, Plaintiff, Mr. Kim,
24 did whatever the grandma asked him to do. And so she was
25 usually at the restaurant, Picnic World, but she -- you know,

1 but whenever she called, you know, Plaintiff, hey, go do this
2 and go do that, so they -- and because -- you know, the
3 grandma was effectively owner of the Picnic World until she
4 passed it down to, I guess, her granddaughter. You know, so
5 it was effectively New York Meat and Picnic World, and they
6 were, you know, joint employers, you know, sharing the
7 employment of Plaintiff. That's why it's improper to just
8 say Count One, you know, took five hours or six hours.

9 I mean, first of all, Plaintiff never said he did,
10 you know, sporadic work. You know, constantly on weekends,
11 he's always worked for the Picnic World. And you know, even
12 during the week, he worked for the Picnic World and New York
13 Meat. So when combined together, you know, he worked much
14 more than, like, you know, 78 hours per week. So you know,
15 Mr. Lash -- you know -- and then, what he stated it's
16 not -- you know, I mean, it's only the Defendants' claim.
17 That's why it's important to talk to other employees who work
18 at the restaurant and say, hey, did they -- was it really
19 true that he actually sporadically every now and then when he
20 happens to be eating at the restaurant they ask him to
21 deliver or was -- you know, did you guys constantly call him
22 and ask him as -- you know, treated him as if he's a regular
23 employee.

24 That's why we need to do the deposition. We don't
25 need to hear from the owners because I know what they're

1 going to say. Of course, they're going to say, oh, he wasn't
2 an employee.

3 MR. LASH: Well, but he's also wanting to depose
4 the owner. And he wants to depose -- he asked for a
5 30 -- the seventh witness that he's talking about is a
6 30(b)(6) witness, who -- what he's looking for -- and this
7 goes back to what I think, you know, part of our objection
8 with him deposing all of our employees in addition to the
9 inconvenience and the disruption to the business is, you
10 know, he's looking to depose everybody about everyone else
11 who has ever worked at the business, and that's what his
12 30(b)(6) notice is about.

13 THE COURT: Sure.

14 MR. SUE: I mean, he says -- I mean, in his
15 30(b)(6) notice, he wants a witness -- let me pull it up. He
16 wants a witness with knowledge of all pay stubs, all W-2
17 forms, all expense reimbursements, all commissions, all
18 bonuses, all tips, and any other documents or evidence
19 relating to the payment of money or benefits for any reason
20 from Picnic World to any of Picnic World's employees for six
21 years.

22 MR. KIM: So Your Honor, again, Picnic World is a
23 small restaurant. They have, you know -- my understanding
24 is -- less than 10 people -- employees.

25 MR. LASH: You're incorrect about that.

1 MR. KIM: And they're making it, you know, as if
2 it's, like, a shoe, you know, conglomerate that, you know,
3 numerous employees that, you know, it's not possible to --

4 MR. LASH: But this case also is not about -- Your
5 Honor, it's not about --

6 THE COURT: Mr. Lash, you cut him off.

7 MR. LASH: It's about Mr. Kim.

8 THE COURT: Look, you can have these depositions of
9 these employees and the bookkeeper and the managers at their
10 location. It will only be about Mr. Kim, and you will make
11 it -- if the issue is how many hours did he work for Picnic
12 World and they can have -- and they may have testimony
13 relevant to that, he's entitled to pursue it. But he's not
14 entitled to question these people or any witness about other
15 employees, what they were paid, how many hours they worked,
16 because this is not a collective action.

17 MR. KIM: Understood, Your Honor.

18 THE COURT: Until Judge Komitee -- it is Judge
19 Komitee, right?

20 MR. LASH: No. I think it's -- I'm sorry.

21 THE COURT: It's Vitaliano. Sorry.

22 MR. LASH: Yes.

23 THE COURT: Until he reverses my decision on the
24 conditional certification motion, discovery on other
25 employees is off the table. I think these employees and the

1 bookkeeper may have relevant testimony concerning Mr. Kim's
2 hours worked, frequency, what have you, and he's entitled to
3 inquire about that. I would envision that these would be
4 very short depositions.

5 MR. LASH: How about the owner of the business? He
6 said he didn't want that, but he noticed her deposition.
7 He's noticed the people -- he's deposed the people they said
8 were managers. He hasn't claimed that she's had -- that he's
9 had contact with her or she would know anything about his
10 work.

11 THE COURT: What is it that you want to ask the
12 owner, Mr. Kim?

13 MR. KIM: Okay. So Picnic World, so there's this
14 lady, Jong Hwan No, she's the daughter of the grandma, so
15 she's was effectively running the place, especially
16 after -- and then I believe she still does. But she claims
17 that, oh -- and my understanding -- so we've had the
18 deposition of her. My understanding was that she was going
19 to be the 30(b)(6) witness. But then on the day of the
20 deposition, she said, no, I'm not a -- I'm not the Rule
21 30(b)(6) witness. So then --

22 THE COURT: When did she become the owner?

23 MR. KIM: So she was never officially on the record
24 of owner, but basically, Judge, under the grandma -- because
25 she was the daughter, she was, you know, running things, you

1 know, as if she was the owner. And then when the grandma
2 passed away, I mean, she's still -- my understanding is she
3 still does the same role --

4 MR. LASH: Can I point out, Your Honor, that --

5 MR. KIM: Officially --

6 THE COURT: Mr. Lash, let Mr. Kim finish.

7 MR. KIM: -- the ownership of the restaurant passed
8 from the grandma to the granddaughter, and so when the
9 daughter came and said that oh, I'm not the 30(b)(6) and we
10 were -- you know, and then the owner is my daughter,
11 basically. So then, we said, okay, then, we need to depose
12 her and see what she knows.

13 THE COURT: Did the owner, who is the granddaughter
14 of grandma, yes?

15 MR. KIM: Yes. That's right, Judge.

16 THE COURT: Did she have any interaction with the
17 Plaintiff?

18 MR. KIM: So whenever Plaintiff was at the
19 restaurant, he saw her there.

20 THE COURT: Other than seeing her there, did he
21 have any interaction with her? Is he contending that she was
22 directing his work, telling him when and where to make
23 deliveries, things like that?

24 MR. KIM: Not that granddaughter, Your Honor, but
25 the daughter, yes.

1 THE COURT: But the granddaughter is the owner?

2 MR. KIM: On the record, yes.

3 THE COURT: And so you assume that she would be the
4 30(b)(6) witness, but she's not?

5 MR. KIM: Actually, I thought the daughter would be
6 the 30(b)(6), and that's what they actually, you know, told
7 me. But on the day of deposition, she said that she's not
8 the 30(b)(6) witness, and so they --

9 THE COURT: So they have not --

10 MR. KIM: -- have not designated.

11 THE COURT: Is there going to be a 30(b)(6)
12 witness, Mr. Lash?

13 MR. LASH: Your Honor, the issue with the 30(b)(6)
14 witness and we've offered to produce a 30(b)(6) witness and
15 why the daughter we could not put up was the scope of the
16 30(b)(6) notice that he served was so broad and had to do
17 with all the other employees that worked there as well as
18 every single delivery that this business has made since 2014,
19 whether Plaintiff did it or not, he wanted the names of every
20 customer of the business, every delivery address -- I'm
21 reading from his notice -- the list of every single party
22 that Picnic World catered to between the years of 2014, which
23 goes back more than six years from when filed this to 2020.

24 So every single delivery that this restaurant has
25 ever done regardless of whether Plaintiff was involved in it

1 in any way, he wanted that as well as knowledge of every
2 single employee and their hours and their pay and their
3 everything and every single employee who's been hired and
4 fired and what hours they worked and how they were scheduled
5 for a six- or seven-year period. And so he asked that to be
6 our 30(b)(6) witness, and we said, no, we can't do that. And
7 I asked him -- we had a phone conference about this, and I
8 asked him to consider narrowing this to focus on what the
9 Plaintiff did. And he said he would consider that and then
10 he never called me back and instead just made the motion to
11 compel.

12 THE COURT: I think you should consider that, Mr.
13 Kim.

14 MR. KIM: Judge, frankly, I actually attached our
15 30(b)(6) notice as a part of the motion because I didn't want
16 to, you know, have he-said, she-said. It's there. And I
17 mean, Judge, the problem is, again, this is a small
18 restaurant with less than 10 employees and it's not -- you
19 know, Mr. Lash is making as if, oh, well, you know, like,
20 I -- you know, the Plaintiff is asking, you know, anything
21 and everything on Earth. And that's not the case, Judge.
22 It's a small restaurant. And I mean, frankly, the owner
23 knows, you know, and they're just trying to play this game.

24 Owner is the one who knows, but they don't want to
25 have the owner available, so that's why they're making this

1 nonsense, you know, objection saying, are you saying, you
2 know, like, every single employee, every transaction, every
3 delivery and on and on and on, when there is -- in fact, the
4 owner, who really, she's the one who knows -- she's the one
5 who directed the Plaintiff. She knows, you know, in detail,
6 the daughter, but because the daughter -- whatever the reason
7 why they're -- they don't want the daughter to be the witness
8 and then that's why they're just claiming all these, you
9 know, objections. Again, Judge, it's a small operation. The
10 owner knows everything. Owner is the one. So we would
11 rather have the owner come and testify as a 30(b)(6).

12 THE COURT: Did you ask the owner any of these
13 questions that you have on your 30(b)(6) notice that I'm now
14 looking at?

15 MR. KIM: So when she --

16 THE COURT: Not the owner but the daughter. Did
17 you ask the daughter?

18 MR. KIM: Yes, Judge. So when the daughter
19 was -- during the daughter's deposition, basically she said,
20 oh, I don't remember, I don't remember, and I don't know, I
21 don't remember. So she just continued -- you know, continued
22 that line of, you know, answering. So obviously, 30(b)(6)
23 witness, she -- you know, the witness cannot say I don't know
24 or I don't remember. And I think that's why they don't want
25 to have her as a 30(b)(6) because she's the one. I mean, I'm

1 telling you, Judge. She ran the business. She's the
2 daughter of the grandma. Effectively, she's the owner. And
3 only on paper, the granddaughter, which is the, you
4 know -- is on paper. So we would rather have her, the
5 daughter, be the 30(b)(6) because she's really the one who
6 knows.

7 THE COURT: You can't dictate who this person --

8 MR. KIM: That's right, Judge. I mean, I'm
9 just -- yeah. You are right, Judge. But they're just
10 playing this game.

11 THE COURT: And you will get a 30(b)(6) witness.
12 It's going to be limited, though, to your client and their
13 practices with respect to your client. Again, this is not a
14 way of getting -- of changing this into a collective
15 because --

16 MR. KIM: Understood, Judge.

17 THE COURT: So produce a 30(b)(6) witness,
18 negotiate a more limited list of topics for the 30(b)(6), so
19 that person can be prepared and get it done.

20 MR. KIM: Yes, Your Honor.

21 THE COURT: All right. Next issue?

22 MR. KIM: The next issue, Judge, is the -- with
23 respect to New York Meat. So they're claiming that the
24 Plaintiff was a manager, therefore, he was an exempt employee
25 from overtime. And again, we're, you know -- so -- but

1 they're not making any of the employees available for
2 deposition. So obviously, it's important to, you know,
3 depose these employees who worked with the Plaintiff and find
4 out, you know, whether Mr. -- you know, Plaintiff was
5 actually spending, you know, all his time on, you know,
6 managing or actually he was, you know, delivering product
7 just like the other drivers. And you know, the Defendants'
8 counsel, Mr. Sue, doesn't want -- obviously, doesn't want it,
9 so that's at issue, Judge. So again, we need to depose the
10 employees briefly.

11 And I also offered to travel to the employer's, you
12 know, jobsite and -- I mean, there are no customers there so
13 there's no issue. So I said, hey, I will travel with a court
14 reporter. I will bring an interpreter and you know, let's
15 have a quick, you know, maybe, you know -- it's not going to
16 last long, so I will try to -- you know, minimal interruption
17 of the, you know, work. But you know, again, they're -- you
18 know, they're jumping up and down and not making the
19 employees available.

20 THE COURT: How many employees are there during
21 this period that the Plaintiff worked for New York Meat?

22 MR. KIM: So my understanding is about six, Your
23 Honor.

24 THE COURT: And are they still employees?

25 MR. KIM: Several of them are but not all of them,

1 Judge.

2 THE COURT: Mr. Sue?

3 MR. SUE: Your Honor, most of these names of the
4 employees that were our -- on our witness list, so to speak,
5 they were given to Plaintiff's counsel back in -- back
6 starting in August of 2021. These are not new names. Now,
7 it appears that after I obtained declarations from these
8 employees in opposition to Plaintiff's class cert motion that
9 Plaintiff had issues with this. And after that, they wanted
10 to depose these individuals for what appeared to be sole
11 purpose of asking about the circumstances surrounding their
12 declarations, not about their employment, not about the
13 Plaintiff's employer status.

14 It's always been my position and -- that the
15 Plaintiff was a manager. All the present employees have
16 signed declarations saying that he was the manager. The new
17 manager that took Plaintiff's position, he declared what his
18 job duties are and that he was the manager and what his
19 duties are, so there's nothing new here, Your Honor. He just
20 wants to prolong this litigation for some reason. And these
21 are not surprise witnesses. And like I said, we're going
22 back to August of 2021 when -- at least -- actually before
23 that when Plaintiff knew about all these employees and what
24 they were going to say during their -- during trial, so to
25 speak.

1 Okay. Now, the class cert motion, there's an
2 appeal obviously, but I mean, as of right now, they've been
3 decided and they're -- the issue of whether these employees
4 signed these declarations and under what circumstances has
5 nothing to do with the case. And I reminded Plaintiff's
6 counsel, you know what? You're going to be able to
7 obviously, owe these -- has been contested, and that's what
8 the trial is for. You're going to have an opportunity to
9 cross-examine these witnesses. The declarations don't have
10 any bearing on trial, obviously, because their witnesses have
11 to appear and testify. So there's no point in dragging these
12 employees and asking, oh, was he the manager. They already
13 said he was the manager. There's no issue there. It just
14 happens to be contest obviously.

15 THE COURT: If New York Meat intends to use these
16 people as witness should we get to a trial, he's entitled to
17 depose them.

18 MR. SUE: Well, they were --

19 THE COURT: You can't shield someone from a
20 deposition by saying, hey, they have relevant knowledge on
21 the employment relationship, what role the Plaintiff played.
22 Here's a declaration that says he's a manager.

23 MR. SUE: Right.

24 THE COURT: So that means he's exempt, so
25 therefore, he doesn't get overtime and because I submitted a

1 declaration, I can't be deposed. That's what I heard you
2 say.

3 MR. SUE: Well --

4 THE COURT: He can cross-examine them at trial.

5 MR. SUE: Right. And as I said before, Your Honor,
6 these names were provided to Plaintiff counsel last year.
7 It's not as if they were just noticed for the first time when
8 they submitted declarations to oppose the motion. These are
9 not new names. These are not new employees. These are
10 someone that Plaintiff has known for over 5, 6, 10, 20 years.
11 So if he did want to depose them, why do it after the
12 discovery deadline is passed or soon approaching? I mean,
13 obviously, there are different types of witnesses that
14 Plaintiff might want to, I guess, depose or subpoena. I
15 mean, there's no end to this. And there's no surprise.

16 THE COURT: I mean, you have to admit, Mr. Kim,
17 it's a little bit late, don't you think?

18 MR. KIM: Judge, if I may? Actually, Defendant
19 filed this declaration from the employees on April 14th. And
20 in that declaration, in that April 14 -- this year, you know,
21 from one of the employee's declaration says, I have the same
22 responsibility of the previous manager, Mr. Kim, and you
23 know -- and then, my job includes, you know, maintain
24 schedule, blah, blah, blah. And so obviously, this is
25 something new. They have never submitted this. And this was

1 just April. And so we obviously need to depose this employee
2 and say, hey -- and frankly, Judge, my understanding is that
3 none of these employees actually read, even understood these
4 declarations.

5 I don't believe they knew what they were signing.
6 And employer just -- when they just hey, you need to sign it;
7 can you sign it, they just signed it without really knowing.
8 Because that's what happened to the other employees, former
9 employees, who the employer approached and hey, can you just
10 sign this for me? And then, they, you know, interpreted it
11 incorrectly, and so they didn't know what they were signing
12 and they got, you know -- so that's what they testified. So
13 these are not -- you know, old the information, Judge, they
14 submitted in April.

15 And it talks about the Plaintiff's case that's
16 saying, hey, you know, he was the manager; I have the same
17 responsibility, then, okay. So Mr. X, did you understand
18 when you signed it? You know, did your employer explain this
19 to you in your language? And if you see those declarations,
20 judge, they're identical. The language is identical. I
21 believe these were prepared by Mr. Sue and Mr. Lash and you
22 know, presented to the employees without really, you know,
23 explaining what they were signing, and they just signed it
24 because they -- you know, well, the employers are asking me
25 to sign something. I mean, employees, you know, they have

1 very few options. I mean, what are you going to do, say no
2 I'm not going to sign it?

3 MR. SUE: Your Honor, the declarations were
4 obtained in good faith, and if counsel is suggesting that any
5 declaration submitted to Court would require some time of
6 evidentiary hearing as to the background and the execution of
7 the declaration, I think that's well beyond what this Court
8 should be doing. It's ridiculous. The information was
9 provided to counsel, we prepared the declarations pursuant to
10 it, and they were signed. And Plaintiff signed declarations
11 also. And like I said, he's mentioning declarations from
12 April regarding the class third motion, these names of the
13 employees, with possibly the exception of the new manager
14 were, like I said, provided back in August of last year.

15 THE COURT: How were they provided, in what way?
16 In what way did you provide the names?

17 MR. SUE: At least Rule 26 -- I have it in front of
18 me, and also, I'm sure they were provided in the paper
19 discovery interrogatories. And this goes back to August.

20 THE COURT: All right. You can depose the New York
21 Meat employees. I think there are six of them, you said.

22 MR. KIM: Yes, Your Honor.

23 THE COURT: It's about the Plaintiff not about
24 their hours and how much overtime or anything like that
25 because it's not a conditionally certified collective.

1 MR. KIM: Yes, Your Honor. Understood.

2 THE COURT: You can inquire about the specifics of
3 them signing those declarations.

4 MR. KIM: Yes, Your Honor.

5 THE COURT: And short depositions, focused
6 depositions.

7 MR. KIM: Understood, Your Honor.

8 THE COURT: What's the next issue, Mr. Kim?

9 MR. KIM: Your Honor, so they also objected to me
10 being on their -- the employer's site. And I offered them
11 as -- so that it's -- as more of a convenience for the
12 employees and for the employer to -- you know, so that they
13 don't have to travel, and instead, I can travel to where they
14 are, so --

15 THE COURT: Well, I thought they objected to you
16 doing a site inspection.

17 MR. KIM: The site inspection was about the
18 posters, you know, the under -- pursuant to the, you know,
19 FSA and New York labor law whether they are having those
20 posters posted. But I also offered them to just do the
21 deposition at their site to, you know, reduce the
22 interruption.

23 MR. LASH: Your Honor, this is Robert Lash. I
24 mean, what posters they may or may -- businesses may or may
25 not have in July of 2022 would have no bearing on -- first of

1 all, I don't even think that they made a claim about that,
2 but if he did in his complaint, what they had posted, Mr. Kim
3 testified that his last work that he did, I think, at Picnic
4 World was around September of 2020. For New York Meat, he
5 said, I think, December of 2020. So we're a year and a half,
6 two years later. You know, what they have posted today is
7 not going to be in any way admissible or relevant or within
8 the scope of discovery as to what they had, you know, two
9 years ago.

10 THE COURT: I agree. No site inspection. But what
11 is the problem with having the depositions done at
12 the -- each of the locations?

13 MR. SUE: This is Jonathan Sue, Your Honor. Our
14 location is in Bronx Terminal Market. There some admissions
15 issues, but it's very disruptive and it's distracting for the
16 employees to have a unknown person there and having to, like,
17 work around their schedule and things like -- of that nature.
18 It's very invasive, Your Honor. If anything, I mean, we'll
19 produce a group of employees at a time at a place -- at a
20 location -- at a place to be agreed. But to, I guess,
21 intrude upon my client's work place and -- I mean, I don't
22 even know what the layout is. I mean, we have meat going in
23 and out all day and we have the driver's with their schedules
24 and we have deliveries going in and out, so I don't think
25 it's very conducive to a -- something formal like a

1 deposition, Your Honor.

2 MR. LASH: Your Honor, this is Robert Lash. We
3 have a similar issue. I mean, Mr. Kim, Plaintiff's counsel
4 has talked about, you know -- I don't think he's ever been in
5 the basement of a restaurant. It's a very, you know, small,
6 cramped space. There really isn't a good place there to do a
7 deposition and to have, you know, multiple people sitting
8 around a table, you know. But we can work out with
9 him -- you know, the Court's ordered certain depositions.
10 We'll work out a place that's convenient.

11 I mean, you know, Mr. Kim says he wants to do this
12 for the convenience of the employees. We appreciate that.
13 So let us work out with him a place that's convenient for the
14 employees. But requiring us to do in a cramped space that's
15 going to interfere with the business and probably
16 doesn't -- isn't big enough to do this I don't think makes
17 sense since it's -- the space just isn't, you know, there for
18 this. It's not set up and conducive to it.

19 THE COURT: Okay.

20 MR. LASH: But there are many places that we could
21 mutually agree upon.

22 THE COURT: Mr. Kim, you don't particularly care,
23 do you?

24 MR. KIM: I don't, Judge. I was offering
25 because -- more for the convenience of the employer and the

1 employee so that, you know, there's a minimal interruption.
2 Frankly, the excuses they provided doesn't really make sense,
3 but if they don't want to do it there, I'm not going to insist
4 upon it being there, Judge.

5 THE COURT: Okay. You determine the location, but
6 get those depositions done.

7 MR. KIM: Yes, Your Honor.

8 THE COURT: And no site inspection, again. What's
9 the next issue, please?

10 MR. KIM: The next issue, Judge, Your Honor, is
11 the -- so the Picnic World. When we issued the discovery
12 request, document production request, they did not provide a
13 single document, and then they said -- basically, they said
14 no relevant -- no responsive documents. And then, when we
15 had a deposition of the daughter of the restaurant,
16 she -- you know, so Plaintiff could have testified that he
17 had numerous text messages, you know, between himself and
18 then the daughter. And the content was about, you know, all
19 the work, what they're being -- the daughter directing him,
20 you know, where to go, what to do. And so when I asked, you
21 know, the daughter, strangely, the communication
22 with -- between Plaintiff and the daughter only that was not
23 there, was missing.

24 There is an app called KakaoTalk that the Plaintiff
25 said that he used to communicate with the daughter but

1 strangely said she replaced the phone -- you know, so she got
2 a new phone. But then all the other chats with other people
3 still has -- you know, is there on that new phone but not the
4 chat with the Plaintiff. So they certified that, you know,
5 no relevant documents exist and then it's -- and they didn't
6 produce any and you know. So then, I want to have those
7 phones be available for forensic examination and see if there
8 was any messages, you know, deleted. If so when was it
9 deleted; was it after the filing the lawsuit, you know, and
10 what was deleted?

11 So New York Meat's owner, Mr. No -- so basically,
12 Judge, my understanding is that he's the one who is basically
13 defending the -- both corporations, on behalf of both Picnic
14 World and New York Meat because the daughter, she's not
15 really -- she's relatively new to this country, so she
16 doesn't really know much versus Mr. No has been in the U.S.
17 for a long period of time, I believe over 30 years. So he's
18 actually directing the defense of both corporations. And
19 then only when it's convenient for him, he says, oh, you
20 know, I have nothing to do with Picnic World; Picnic World's
21 a different entity so -- and --

22 THE COURT: All right. Let's just hold on just one
23 second. So Jong Hwan No is the daughter?

24 MR. HUR: Your Honor, this is Scott --

25 THE COURT: Left me sift through this. I know

1 we've been through this, but I need to --

2 MR. HUR: Sure.

3 THE COURT: I want to go through it again.

4 MR. HUR: It's Jong Hwan No, is the daughter.

5 THE COURT: And Jong Hwan No is the grandmother?

6 MR. KIM: Yes, Judge. Correct.

7 THE COURT: And the granddaughter is not named?

8 MR. LASH: Correct.

9 MR. KIM: Correct, Judge.

10 THE COURT: And Mr. No is Yun Hwa No's husband?

11 MR. KIM: No. It's son.

12 THE COURT: Son. Oh, I see. So it's son, who is
13 directing, according to Mr. Kim, the litigation. It's the
14 daughter who has already been deposed and who had this cell
15 phone with this chat app on it that now has no chats with the
16 Plaintiff but chats with other people during that time.

17 MR. HUR: Your Honor, this is Scott Hur for Picnic
18 World, and I defended the deposition for Ms. Jong Hwan No,
19 and I'm really -- you know, this is really upsetting me
20 because Mr. Kim's purposely misrepresenting to the Court that
21 Ms. No has deleted. She denied. Specifically, Mr. Kim asked
22 did she delete it. She said no. She said no on the record.
23 Okay. And second thing is, the phone was -- she dropped it.
24 It was broken. He specifically asked her now -- Mr. Kim
25 says, oh, strangely enough. He asked, why did you change the

1 phone? And she replied, she responded, I dropped the phone;
2 it broke, so I replaced it. So I don't know why he
3 thinks -- Mr. Kim conveniently thinks that she deleted. She
4 testified she did not delete it.

5 THE COURT: So answer the question, though,
6 Counselor.

7 MR. LASH: -- please, Your Honor, which is
8 that -- well, two things. When Mr. Kim put this in his, you
9 know, letter, I was surprised to see it because when we had
10 our meet and confer, this was not something that he had
11 raised. But put that aside for a moment. What he's saying
12 now is that his client has text messages that he did
13 with -- you know, he's saying with Picnic World that he is
14 refusing to produce. He has not produced and he is refusing
15 to produce what he wants --

16 MR. KIM: That's not true.

17 THE COURT: Okay.

18 MR. LASH: -- possession of Ms. No's phone so
19 that -- to see what happened to her messages, even though
20 these same messages, if they existed, would be on Plaintiff's
21 own phone, but he has not produced any, not one that he says
22 exists.

23 THE COURT: Let me go back to my original question.
24 She had a phone with this chat app on it. The phone broke.
25 She got a new phone, put the same chat app on it, and then

1 produced chats during the relevant period with other people
2 but not with Plaintiff?

3 MR. HUR: No, Your Honor. That's what Mr. Kim is
4 saying, but I don't know where he got this information. She
5 surely didn't testify. Mr. Kim asked her, and she said she
6 did not delete it. So I don't know where he's getting this
7 information.

8 MR. LASH: And there were no other chats there --

9 MR. HUR: Exactly.

10 MR. LASH: -- with anyone else --

11 MR. HUR: Right.

12 MR. LASH: -- either.

13 THE COURT: Did she produce any chat with anyone?

14 MR. LASH: No.

15 MR. HUR: And Your Honor, just to be --

16 MR. KIM: Your Honor?

17 MR. HUR: I'm sorry.

18 MR. KIM: Your Honor?

19 MR. HUR: If I may? Your Honor, just to let you
20 know, I recently changed my phone from Android app, and I
21 know the app that Mr. Kim's referring to, KakaoTalk. I'm
22 just letting you know, when I updated it -- updated. When I
23 changed the phone, none of my messages for everyone that I
24 was chatting with came up, not because I deleted but because
25 I changed the phone. And when I installed it, it was blank.

1 I'm just letting you know, Your Honor.

2 MR. LASH: But if Plaintiff hasn't changed his
3 phone, then he presumably would have all these texts that
4 he's saying exist, but he refuses to produce.

5 THE COURT: Is that correct, Mr. Kim?

6 MR. KIM: No, Your Honor. So I can tell you -- I
7 can tell the Court, Judge -- so unfortunately, Mr. Kim
8 doesn't have any of those chats. If they were in existence,
9 we would love to produce it already, but unfortunately, he
10 doesn't have it. And during the deposition, I asked Ms. No
11 to show and she showed it on -- during the deposition, Judge,
12 that how -- you know, she explained that she got the new
13 phone but she's not technically, you know, proficient, so she
14 had her kids, meaning her daughter or the son-in-law, do it
15 for her. And so I asked do you have any chat messages with
16 the Plaintiff, and she said no. And then I asked her, do you
17 have chat messages with any other people, and she held her
18 phone and showed it during the deposition and said, yes, I
19 do. That's why I said, then, how come you have chat
20 messages --

21 MR. HUR: Yes, new messages, Your Honor, new
22 messages, Your Honor.

23 THE COURT: Mr. Kim, did you see what period those
24 messages covered, if it was during the period that she was
25 supposedly having these messages with your client or

1 subsequent to that?

2 MR. KIM: So I cannot tell, Judge, whether
3 it's -- what period of time --

4 THE COURT: Okay.

5 MR. KIM: -- because it was during the deposition
6 and she just held her phone and showed.

7 THE COURT: You haven't made a sufficient showing
8 that she got rid of any messages. Your client is
9 saying -- well, the only evidence you have is your client is
10 saying, I texted her with Cow Chat [sic] or whatever it is
11 and her saying, I broke the phone, I got a new one, and I put
12 this message on there -- this app on there, and now I have
13 chats with other people subsequent to the period of time when
14 she was having these chats with your client. That's not
15 enough to say she deliberately -- or to even get close to
16 saying that she deliberately deleted those messages. And
17 it's really a -- it's quite a stretch. Does she dispute that
18 she had chats with your client?

19 MR. HUR: She testified she doesn't recall. But
20 that being said, I don't know whether -- well, my
21 recollection is that she did not remember.

22 THE COURT: All right. I don't see enough, Mr.
23 Kim, to compel her to have a forensic image done of her phone
24 and then for you to go through it.

25 MR. KIM: Understood, Your Honor. So we had the

1 same issue with the New York Meat owner, Mr. No. So it
2 appears that he didn't really search his cell phone to
3 produce documents, and I don't know if his attorney even
4 asked him to produce them, but certainly, nothing was
5 produced. But during the deposition of Mr. No, he had
6 messages on his phone, so we would like -- we certainly would
7 like him to produce those.

8 MR. SUE: This is Jonathan Sue, Your Honor. We're
9 not contesting that Plaintiff worked for us. He did work for
10 our company for over 28 years. I don't see the relevance of
11 what type of text messages that there may have been back and
12 forth. I mean, he worked for us. My client communicated
13 with him via cell phone, via text messages and whatsoever. I
14 mean, what --

15 MR. KIM: No. But Mr. No also -- at the same time
16 also said that Mr. Kim was done with work 1 p.m. -- usually 1
17 p.m. or sometimes even earlier. And those messages
18 originated from -- during the weekend and you know, much
19 later than 1 p.m. And so again, those will contradict
20 whatever testimony and will show that, you know, the
21 testimony of Mr. No is not to be trusted.

22 MR. SUE: There was never any allegations that he
23 did work for New York Meat on the weekends or late at night.
24 I mean, our business is a wholesale meat business. It
25 doesn't operate that way. And even if there were text

1 messages, it's not as if Plaintiff could've acted on it at
2 1:00 in the morning when he received a note from the owner
3 saying, oh, make sure you, you know, purchase 200 pounds of
4 XYZ meat next week or something.

5 MR. KIM: So actually, those messages also from Mr.
6 No was regarding Picnic World's work that you know, hey,
7 bring -- make sure you bring this, you know, company vehicle,
8 van or the truck for the Picnic World's related delivery. So
9 that will also shed light on whether, you know, those two
10 corporations are joint employer or not.

11 MR. LASH: Your Honor, this is Robert Lash. Can I
12 just say -- reiterate again? These are all messages that,
13 you know, Mr. Kim, the attorney is speculating about that his
14 client had. He said his client doesn't have these anymore,
15 even though they were on his client's own phone, and he
16 hasn't provided any explanation for why his own client, the
17 Plaintiff, doesn't have these. He's trying to gloss over
18 that and just say, you know, forget about why I don't have
19 messages on my own phone; let's just talk about why you
20 don't.

21 MR. KIM: No. No. Judge, so Mr. Kim -- well, this
22 is evidence that would help our case, so there's no reason
23 why if we did have them we wouldn't produce them. We don't
24 have them. And then Mr. No during his deposition had those
25 messages, but he did not produce them. That's why we're

1 asking, hey, you didn't produce them, produce them.

2 MR. SUE: Plaintiff did produce them, Your Honor.

3 I mean, I have it in the discovery response. It's JKKim0001
4 through -- a lot of it's in Korean, but they appear to be
5 text messages and screenshots of text messages. So that's
6 about over 200-something pages of text messages and mostly in
7 Korean, Your Honor, so I don't know why he's saying he didn't
8 produce them. He has them. And he gave it to -- this was
9 back in February when they produced them, Your Honor.

10 THE COURT: Mr. Kim, how can you say you didn't
11 produce them, when Mr. Sue has got them on his computer?

12 MR. KIM: Judge, so what he is referring to is a
13 different one. I'm talking about the -- again, the chat app
14 called KakaoTalk. He never produced the KakaoTalk messages.

15 THE COURT: If your client has text messages with
16 Mr. No, how does he not have the KakaoTalk messages with Mr.
17 No?

18 MR. KIM: So the same issue, Judge. The Plaintiff
19 replaced the phone and then with the new phone -- on his new
20 phone, those messages are not there. I mean, we would love
21 to produce them, if it was there. I mean, obviously, there's
22 no reason -- it would only, you know, support our
23 allegations, but unfortunately, we -- yeah, there was none.
24 But we did see it on Mr. No's phone during the deposition.

25 MR. SUE: This is Jonathan Sue, Your Honor. We do

1 have what appear to be text messages from January 2017 on.
2 And like I said, they all seem to be in Korean, so I cannot
3 exactly say -- tell what they say, but they go up to 2020.
4 And I don't think it's only with my client. I think it's
5 with possibly the vendors also from what I can tell. And as
6 stated before, we're not denying that there were
7 communications between an employer and the -- and his manager
8 for the past 20-something years that he's worked there. I
9 mean, I don't see the relevance of producing a client's very
10 personal cell phone and digging into all the private
11 information he has in there, when Plaintiff had that
12 information on his own.

13 THE COURT: Well, he doesn't have all of it,
14 apparently. That's what he's saying.

15 MR. SUE: Well, I have 200-something pages of it.
16 I --

17 THE COURT: And are those text messages, or is that
18 KakaoTalk?

19 MR. SUE: I couldn't tell, Judge. I mean, some of
20 them are in color. Some of them are just plain
21 black-and-white text. Some of them appear to be screenshots.
22 There's actually photographs in some of them with bone marrow
23 and different types of meat.

24 THE COURT: Do you know how much a forensic exam of
25 a cell phone costs, Mr. Kim?

1 MR. KIM: It varies, Your Honor, but it will come
2 anywhere from, you know, \$1,000 to more depending on the
3 scope and range and --

4 THE COURT: I think all of this that we're
5 discussing is losing a sense of proportionality, frankly.
6 You're turning this into a very expensive case for your
7 client where, you know, the return may not be what he
8 expects. I don't see the basis for Mr. No's cell phone
9 either.

10 MR. KIM: So Your Honor, the problem is Defendants
11 don't produce anything, and they just say, I don't -- we
12 don't have it, and we're stuck with it. And so you know,
13 there's the saying to trust but verify. Frankly, Judge, we
14 don't trust them, and we need to verify. That's the problem,
15 Judge. So Picnic World did not produce a single document and
16 they said they don't have any, and I find it hard to believe,
17 Judge. So in that case --

18 THE COURT: Mr. No is not from Picnic World, right?
19 He's from New York Meat.

20 MR. SUE: That's correct, Your Honor, and to be --

21 THE COURT: Correct, Judge. But he is effectively
22 running the defense for both corporations, to be frank,
23 Judge.

24 MR. SUE: Well, that's a nice theory, Your Honor,
25 but I mean, that's not the facts.

1 THE COURT: Mr. Sue, have you asked Mr. No if he
2 has KakaoTalk on his phone and whether he engaged in --

3 MR. SUE: I don't --

4 THE COURT: -- conversations with Mr. Kim on it?

5 MR. SUE: He did mention that he often communicated
6 with the manager via text messages. And at one point, they
7 did have some type of group KakaoTalk possibly, but then he
8 realized that Plaintiff was using it to -- after he left, he
9 was using it to, I guess, get information regarding pricing
10 because he started working for a competitor, so he knocked
11 them out of there. But it is for a very short period of
12 time.

13 THE COURT: And does he say that he doesn't have
14 text messages on the phone with -- not KakaoTalk, text
15 messages, with the Plaintiff?

16 MR. SUE: I don't know that I produced them. Let
17 me see. I'm going through my discovery responses. I'll have
18 to get back to you about that, Your Honor. I don't want to
19 give you the wrong information. But I'm sure at one point I
20 did have a conversation with him, but I just don't -- I just
21 don't see the notes about it right now.

22 THE COURT: And Mr. Kim, you have done
23 forensic -- or had a forensic exam done on a cell phone
24 before?

25 MR. KIM: Yes, Your Honor, in the past.

1 THE COURT: How long is the cell phone taken from
2 the person?

3 MR. KIM: Oh, so they would just get the phone
4 first and then download the data and then return the phone,
5 so it's not like, you know, the person is without their phone
6 for an extensive period of time. Analyzing the data, that
7 ranges but not -- you know, just downloading the data from
8 the phone doesn't take a long time, Judge.

9 THE COURT: All to find out if Mr. No has had any
10 text messages or KakaoTalk messages deleted from his phone?

11 MR. KIM: Your Honor, so the problem is if they
12 were, like, you know, regular other corporate defendants,
13 they would voluntarily produce because you know -- but these
14 Defendants, Judge I have a hard time getting any information.
15 They just deny. They say, you know -- and they don't produce
16 anything. So under the circumstances, I -- this is not my
17 preferred because it's, you know, but you know --

18 MR. HUR: Come on, Mr. Kim. Stop it. I mean, you
19 got to stop -- you know, you're saying a lot of these things
20 without any support. I mean, just stick with the facts and
21 what they are not what you believe. You know, you keep
22 implying that we're not cooperating with producing. We are.

23 MR. LASH: You asked for the daughter as a witness.
24 I said, I didn't think she'd know anything. You insisted
25 that you'd depose her anyway, so I said, fine, let you depose

1 her. You asked for --

2 MR. HUR: Your Honor --

3 MR. LASH: -- you've asked for documents, pay
4 stubs, et cetera, we told you we don't have any because he
5 wasn't on the books as an employee. It's not that we're
6 withholding anything. And so the way you're characterizing
7 this is very misleading.

8 MR. HUR: Your Honor, we don't have 10 employees.
9 Picnic World has 26 employees. I mean, there are a lot of
10 things that -- we don't want to argue and bicker in front of
11 you, Your Honor, but you know, I'm getting really tired of
12 Mr. Kim misleading this Court.

13 THE COURT: Okay. All right. No cell phone for
14 Mr. No. Next issue?

15 MR. KIM: So how much time -- so since the -- how
16 much time the discovery will take, Judge? So since I was
17 hoping to get the employee depositions all in one day by, you
18 know, being there, but apparently, they don't want me onsite.
19 So are they producing employees one by one on different
20 dates? I have no idea what they have in mind.

21 THE COURT: Well, you're going to need to work that
22 out. I'm going to give you 30 days. If that's not enough,
23 then you can write me and ask me for more. And I have to say
24 that this -- you folks should've settled this case a long
25 time ago. A company that has no records, it's just very hard

1 for them to say that someone is a manager when you have no
2 records.

3 MR. SUE: We do have records, Your Honor. I don't
4 know if you're referring to New York Meat or Picnic World,
5 but he's been a manager for over 20 years.

6 MR. LASH: And there are documents saying that he's
7 a manager that have been produced and were -- he, you know,
8 was asked about it, you know.

9 MR. SUE: He had a business card that indicated
10 that he was a manager. He represented to third-party that he
11 was the manager.

12 MR. KIM: Yes. But that's not the law, Judge. He
13 needs to be spending, you know, the majority of his time
14 being, you know -- doing the job as a manager. But Plaintiff
15 was delivering meat, you know. He had a truck and he had a
16 route, all these -- he had customers who were -- he was
17 delivering to, so. And employers tend to just claim, oh,
18 you're -- you know, this person's a supervisor, that person's
19 a manager just to be -- you know, to -- and that -- they
20 think that, you know, by just naming somebody a manager they
21 think they can evade, you know, overtime, but that -- it
22 doesn't work that way. So the fact that, you know,
23 they -- you know, so. They had documents showing that he's a
24 manager doesn't, you know -- it is not a conclusive --

25 THE COURT: Well, it's going to be an interesting

1 trial. I think you guys should just get ready for that.

2 MR. SUE: Well, it is interesting because all
3 the --

4 MR. LASH: Your Honor, this is Robert Lash. Could
5 I raise one last issue that wasn't raised in the letters
6 because it just arose at the end of last week? Mr. Kim
7 produced to us at the very end of last week, around probably
8 another 800 pages of cell phone records from his client,
9 credit card bills from his client listing thousands of phone
10 numbers, hundreds or thousands of charges -- probably tens of
11 thousands of phone numbers. I have no idea what this is. I
12 have no idea what he's claiming pertains to this case or what
13 doesn't. Clearly, a lot of it doesn't. You can tell. But I
14 have no idea what he's claiming does or doesn't.

15 And since he waited -- this was in response to
16 discovery requests that we served months and months ago, and
17 he waited until after the depositions were over. And this
18 wasn't something that requested at depositions. This was
19 requested months before the depositions. He waited until
20 after they were over until the close of discovery -- the day
21 discovery closed to produce this and dumped on me, hundreds
22 of pages, almost 1,000 pages. I need to go through this, but
23 I'd like the right to reopen Plaintiff's deposition, if need
24 be, to ask what these things that he just produced are
25 because I didn't have an opportunity at his deposition to

1 produce them because even though he had all this stuff before
2 his deposition, he chose to wait until afterwards to produce
3 it.

4 MR. KIM: Your Honor, Mr. Lash already had emailed
5 me to -- the same question and I already responded to them
6 that I will get him why, you know, we produced them and for
7 what numbers is for -- you know, and for whose number belongs
8 to what so that he knows why we're producing. So this has
9 already been discussed. And you know, he emailed me. I
10 replied back saying I'm going to produce, you know, those
11 information, so --

12 THE COURT: And if Mr. Lash wants to --

13 MR. LASH: I'm waiting for Mr. Kim to respond to
14 that email to let me know, but I'm -- I don't necessarily
15 just -- can rely on -- I mean, as Mr. Kim said, you know,
16 trust but verify, you know. They produce information but
17 don't want me to ask his client about it until the day of
18 trial.

19 MR. KIM: Those are the numbers of the employees,
20 so --

21 THE COURT: Stop.

22 MR. KIM: -- verify easily.

23 THE COURT: Stop. Stop. Mr. Lash, if you want to
24 take Mr. Kim's -- the Plaintiff Kim -- deposition on those
25 documents after you get some clarification from Mr. Kim, the

1 lawyer, as to what they are. You can ask Mr. Kim, the
2 lawyer, and if they won't produce Plaintiff Kim for
3 re-deposition, you can write to me and ask for them -- for me
4 to compel them to do that.

5 MR. LASH: Thank you, Your Honor.

6 MR. KIM: But only regarding those documents, Your
7 Honor, correct?

8 THE COURT: Look, I'm not making any prophylactic
9 rulings. If there's something I don't know that Mr. Lash was
10 full in what he just got -- everything if he's. If there's
11 some other reason to re-depose Mr. Kim, he can ask for it.
12 But it's got to be a good reason, and it's got to be
13 something that was left undone in the prior deposition or
14 unanswered, not new material.

15 MR. LASH: Thank you, Your Honor.

16 THE COURT: I will extend discovery an additional
17 30 days, which puts us to -- we'll do it from now to August
18 19th. And I would like a -- you know what? No. We're going
19 to have a telephone conference the 22nd. I'm on vacation.
20 No. All right. So August the 30th at 2 p.m.

21 MR. LASH: Your Honor, this is Robert Lash. I'm on
22 trial in Nassau County Supreme on August 29th and 30th.

23 THE COURT: Oh, okay. Then, it's going to be
24 September 6th at 10 a.m.

25 MR. KIM: Yes, Your Honor.

1 MR. LASH: Thank you, Your Honor.

2 THE COURT: Okay. Is that it?

3 MR. KIM: That's it, Your Honor.

4 THE COURT: Thank you.

5 MR. KIM: Thank you, Your Honor.

6 MR. LASH: Thank you, Your Honor.

7 MR. SUE: Thanks, Your Honor.

8 (Proceedings adjourned)

9

10 TRANSCRIBER'S CERTIFICATE

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.

14

15 *Natalie C. Webb*

August 5, 2022

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18 _____
Natalie C. Webb

DATE

19 Legal Transcriber

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